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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

The Communications Assistance)
for Law Enforcement Act)
of the Communications Act)

CC Docket No. 97-213

To: The Commission

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA") hereby submits reply comments in the above-captioned proceeding. RCA joins those commenters urging the Commission to reject the Joint Petition for Expedited Rulemaking filed by the Federal Bureau of Investigation and the Department of Justice (the "FBI Petition").¹ The Commission must instead ensure that the requirements of the Communications Assistance for Law Enforcement Act ("CALEA") are implemented in a reasonable and balanced manner. In support thereof, the following is shown:

^{1/} See In the Matter of Communications Assistance for Law Enforcement Act: Order Granting Motion to Extend Reply Comment Date, CC Docket No. 97-213, DA 98-1048 (Jun. 4, 1998); see also In the Matter of Communications Assistance for Law Enforcement Act: Petition for Rulemaking Under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act, filed by Center for Democracy and Technology; Joint Petition for Expedited Rulemaking, filed by Federal Bureau of Investigation and Department of Justice; Petition for Rulemaking, filed by Telecommunications Industry Association; Petition for Rulemaking, filed by Cellular Telecommunications Industry Association; Petition for Extension of Compliance Date, filed by AT&T Wireless Services, Inc., Lucent Technologies, Inc., and Ericsson, Inc.; Joint Motion to Dismiss CTIA's July 16, 1997 Petition for Rulemaking, filed by Federal Bureau of Investigation and Department of Justice: Public Notice, CC Docket No. 97-213, DA 98-762 (Apr. 20, 1998).

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I. INTRODUCTION.

RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide wireless service to predominantly rural areas in which, collectively, more than 6 million people reside.

The record in this proceeding demonstrates that the Commission should interpret CALEA narrowly. The FBI's criticism of the industry standard² is unwarranted; its recommendations are unduly burdensome, and well beyond those mandated by the statute. As documented in the record, the cost of implementing upgrades necessary to meet the FBI-proposed standards is antithetical to the directive that CALEA be implemented in a cost effective manner.³ RCA also agrees with the overwhelming majority of parties arguing that CALEA was not intended to expand the wiretap authority of the FBI, but was intended only to update existing surveillance laws in order to meet the capabilities of new technologies.⁴ Accordingly, RCA urges the Commission to ensure

^{2/} Congress provided in CALEA that carriers deploying equipment that met the publicly-available industry standard would be within a "safe harbor" of compliance. The industry standard, JT-STD-025, was released in December 1997 by the Alliance for Telecommunications Industry Solutions and the Telecommunications Industry Association.

^{3/} See, e.g., Comments of Nextel Communications, Inc. at 4, 5; Comments of Personal Communications Industry Association at 5; and Comments of US West, Inc. at 25, 26.

^{4/} See, e.g., Comments of Americans for Tax Reform, Center for Technology Policy, Citizens for a Sound Economy, and Free Congress Foundation at 8; Comments of Electronic Privacy Information Center, the Electronic Frontier Foundation, and the American Civil Liberties Union at 16; and Comments of PrimeCo Personal Communications, LP at 4.

that CALEA is implemented in a manner consistent with the statute's balance between law enforcement objectives and economic rationality.

II. THE COMMISSION MUST REJECT OVERLY-BROAD ENFORCEMENT REQUIREMENTS.

RCA shares the concerns expressed by other industry representatives that the goals set forth in the FBI Petition are contrary to explicit Congressional directives. The proposed expansion of CALEA compliance capabilities imposes undue cost burdens and jeopardizes the efficient planning and deployment of facilities by small and rural carriers.

Having smaller customer bases, small and rural carriers generally incur greater per-subscriber costs when deploying facilities or upgrades. Accordingly, as "capabilities" are added to the industry standard, this already inflated per-subscriber cost increases to broaden the gap between the small/rural and large/urban subscribers. Given that the FBI itself has recognized the historic lack of demand for law enforcement interception in many smaller markets and rural areas, the FBI's aggressive demand for excessive nationwide deployment is unsupported and unwarranted.

In its Final Notice of Capacity Requirements ("FBI Notice"),⁵ the FBI documented that capacity requirements in rural areas are minimal. Typically, and as confirmed by research

⁵/ See Implementation of Section 104 of the Communications Assistance for Law Enforcement Act: Final Notice of Capacity, Federal Bureau of Investigation, 63 Fed. Reg. 12217 (1998).

undertaken by the FBI, carriers in rural areas have not been requested by law enforcement to provide access for surveillance. The FBI Notice acknowledged this fact: "[i]n its review of historical interception activity, law enforcement found that numerous counties and market service areas had no interception activity during the time period surveyed."⁶ Indeed, the FBI determined that some areas would have capacity requirements of zero.⁷

The imposition of costly and burdensome capabilities standards upon carriers that have historically not been requested by law enforcement officials to provide any interceptions is wasteful and unnecessary, and, in some cases, completely unproductive. RCA notes that many local law enforcement offices in rural areas are not themselves equipped to benefit from a carrier's deployment of upgraded surveillance technology.

Section 107(b) of CALEA requires the Commission to ensure that capability requirements are achieved by cost effective means, and that the cost of compliance imposed on rate-payers is minimized. It is clear that the implementation of overly-burdensome requirements in rural areas and small markets without any history of wiretap surveillance is not cost effective, and risks imposing upon rate-payers unnecessary and wasteful expense.

⁶/ Id. at 12227.


⁷/ Nevertheless, the FBI has imposed capacity requirements on carriers serving areas in which historically no interceptions have been requested, noting, that the intent of CALEA is to preserve the ability to conduct interceptions everywhere. Id.

III. CONCLUSION

Accordingly, for the reasons outlined above, RCA respectfully urges the Commission to ensure that CALEA requirements are implemented in a reasonable and balanced manner, consistent with Congressional directives.

Respectfully submitted,

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June 12, 1998

CERTIFICATE OF SERVICE

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Reply Comments of The Rural Cellular Association", was served on this 12th day of June 1998, by first class, U.S. Mail, postage prepaid to the following parties:


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